



STOP PRESS

A monthly newsletter from the NSW Bar Association

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“Servants of all yet of none”

No. 69 December 1999

President's Column

To those who believe the popular press, in but a few days we will see the end of the millennium and the dawn of a brave new world. The more conventional among us, however, accept the definition of millennium as meaning a period of 1,000 years (*Concise Oxford Dictionary*) and conclude that we have another year to go before that fateful day.

The question whether the end of the millennium is a fateful day is, too, a matter of debate. For example, my reliable *Concise Oxford Dictionary* defines 'millennium' as '(fig.) period of good government, great happiness & prosperity.'

Our forebears did not embrace that meaning. In *The Pursuit of the Millennium* Norman Cohn wrote of the movement which swamped Europe when, heeding a warning that the end of the first millennium A.D. meant the end of the world was nigh, hundreds of thousands of people massed across Europe to prepare for what they saw as the coming war between good and evil. To put it bluntly, society was in turmoil - doom and gloom was forecast.

Happily I am able to say that the dictionary meaning of 'millennium' appears to be prevailing.

For my part, the end of the year has brought happiness in my election as President of the Bar Council. I am honoured and privileged to occupy this position. I will do my best to serve your interests to the best of my ability.

I follow in the very large footsteps of Barker QC who, in his good 'government' of the Bar, devoted himself tirelessly to its interests. There are many things about Barker QC's presidency which will endure. Few will forget his pithy letters to the Editor, for the publication of which he had a higher strike rate than most legal luminaries. Few, too, would forget his relentless ripostes to the never-ending attacks on the legal system by the uninformed (and occasionally the



Ruth McColl S.C., President.

informed but misguided). We owe him a great deal for his vigorous and thoughtful defence of our legal system.

By way of contrast further north, the Bar is in turmoil. On 19 November the High Court in Kuala Lumpur granted an interlocutory injunction to restrain the holding of an Extraordinary General Meeting of the Malaysian Bar which was to be convened to discuss serious matters affecting the Malaysian judiciary. The Malaysian Bar Council decided not to appeal against the granting of the injunction but, rather, to seek an early trial to enable the presentation of full arguments on the various issues raised. The issues raised are said to concern the role of the Malaysian Bar in relation to the administration of justice and, in particular, whether it is within the province of the Malaysian Bar's right and/or duty under the *Legal Profession Act 1976* to discuss serious matters affecting the judiciary. It is a sorry state of affairs that the question whether the Malaysian Bar is entitled to debate such matters should be open to doubt, let alone the subject of an injunction to restrain discussion of such matters. We are fortunate, indeed, that we can be confident nothing of that ilk would happen here.

Whether it be the end of the millennium or just a start of a New Year, there will, from early next year, be several new Barristers' Rules designed, in part, to give express recognition for the need for clients, whether in criminal or civil cases, being given clear advice as to alternative options to a fully blown trial, to ensure that only well-founded allegations, of no matter what degree of seriousness, are made in connection with litigation and to reinforce the duties the Bar owe to their clients, the Court and the public at large to ensure that litigation is conducted with the utmost efficiency consistent with the principles of justice. As members will recall, an exposure draft of these rules was circulated in September 1999. The circulation of the exposure draft went far beyond the members of the Association. The draft was circulated to legal practitioners and the judiciary throughout Australia, to legal academics and to various representatives of the media. Numerous comments were received and reviewed by Walker S.C. and the (mostly) constructive suggestions incorporated in a revised version of the rules. That revised version was considered by the Council in a 2 1/2 hour meeting on 8 December during which further amendments were made.

I expect the new rules to be gazetted early in the New Year. They will come into force a month after publication in the *Gazette*. A copy will be circulated to all members with an Explanatory Memorandum. Walker S.C. worked hard and long on these rules and they are, as would be expected, reflective of great thought and consideration of the issues the Bar faces both in its own practices and in its ongoing relationship with the Court. The Bar Council, by acclamation, passed a vote of thanks to him for his hard work.

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Bar Council Business for October 1999

Any member interested in a particular matter should contact either the relevant member of Council or the Executive Director for further information.

President's Report

Australian Legal Convention, Canberra, 8-10 October 1999

The Acting President advised that she and the Executive Director had attended the Australian Legal Convention in Canberra on 8-10 October 1999. The Convention had included the Law Council of Australia's AGM and a meeting of the Australian Bar Association's Council.

Law Council of Australia AGM, Canberra, 9 October 1999

McCull S.C. noted that at the Law Council's AGM its constitution had been formally amended to entrench a position on the Executive for the Bars.

Australian Bar Association – Council meeting, Canberra, 9 October 1999

McCull S.C. advised she and the Executive Director had attended the ABA's Council meeting held during the Legal Convention. Matters discussed included:

ACT Bar Association

The President of the ACT Bar Association, Purnell S.C. had advised that the ACT Government was conducting a

national competition policy review of the legal profession, similar to that which had been conducted in NSW in 1998.

Bar Council resolved that the Acting President, having regard to the Bar Council's discussion, write to the ACT Attorney-General expressing support for a system of governance in the ACT that ensured the independence of the Bar.

Items for Consideration

Cross vesting – Law Council of Australia – Business paper for the meeting of 9 October 1999

Bar Council resolved to support a referral of powers from the States to the Commonwealth in relation to Corporations Law and Family Law related matters under Section 51(xxxvii) of the Constitution.

Legal Aid Funding – minutes of Legal Aid Committee Meeting, 5 October 1999

Bar Council resolved that the President write to the Legal Aid Commission of NSW to reiterate the requests that the Legal Aid Commission consider increasing fees to counsel, with particular reference to the absence of any increase over the last 9 years. Bar Council also resolved to conduct a survey of members to ascertain the issues affecting members in relation to legal aid.

Senior Counsel – date of effect of appointment

Bar Council resolved that the date of effect of appointment of Senior Counsel be the date of the formal announcement of appointment by the President; the Senior Counsel protocol of 20 May 1999 to be amended to reflect this decision.

NSW Bar Association Constitution – draft dated 19 October 1999

Bar Council approved the proposed new constitution.

Note: The Bar Council regularly considers requests by the Attorney-General of NSW, courts and other agencies for advice on proposed legislation. The Bar Council usually receives a report on these proposals from the relevant Bar Association committee. Because the advice is sought on a confidential basis, it is not noted in these summaries of the Bar Council business. However, copies of the written advice are made available to the committees, and distributed to other interested parties.

Similarly, because of the confidentiality provisions in the *Legal Profession Act 1987* (s.171P), the Bar Council's deliberations on professional conduct matters cannot be noted in these summaries.

Matters discussed by the Bar Council reported elsewhere in *Stop Press*, too, are omitted from these summaries.

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President's Column

I anticipate too, that the Supreme Court will shortly amend its rules to put in place procedures directed to reinforcing practitioners' responsibility for assisting in the just, fast and efficient administration of justice.

A seminar (which the Chief Justice will attend) will be held early next year in the Bar Association to explain the intention and operation of both the new Barristers' Rules and the new Supreme Court Rules.

As members are aware, the end of each year witnesses a roll-over of Bar Association committees. Justice Lindgren has been the chair of the Education Committee since June 1993 but, sadly, he has decided to relinquish that position. When first appointed to

the position Justice Lindgren was still at the Bar. It is a measure of his dedication to the education of new members that he continued in that role for so long after his appointment to the Bench. During that period the Reading Programme has gone from strength to strength. New rigour was introduced to the course by way of Practice and Procedure and Evidence exams to accompany the Ethics exams. The first *Pupillage Handbook* was produced in November 1994. Formal connections were established between the Association and various legal education institutions such as universities, the College of Law and the Centre for Legal Education. The Bar's Reading Programme has gained an enviable reputation among Practical

Legal Training and Continuing Legal Education providers. The Program was favourably reviewed by the Centre for Legal Education in 1996. Justice Lindgren's leadership of the Education Committee has always been clear and fore-sighted. He has been an outstanding chairman and will be missed not only by the members of his committee and the readers who benefited from his hard work, but by all members of the Bar.

I encourage all members to contact me with any suggestions, requests for assistance or, criticisms.

Finally, I am confident that, whatever be the correct date, the dictionary definition of millennium will prevail into the 21st century. I wish you a safe and happy Christmas and New Year.

Portrait of Chief Justice Gleeson AC

The NSW Bar has had many great leaders. The Silks of 1997 (listed below) recently donated to the Bar Association a portrait of one of those leaders, the present Chief Justice of Australia, The Hon. Murray Gleeson AC.

The portrait is hung presently in the Association's Common Room where the Chief Justice was a regular attendee whilst at the Bar. It is a source of considerable pleasure (and pride) that His Honour continues to frequent the Common Room. We hope that confronting his portrait each time he enters will not deter him.

Bill Leak painted the portrait over a number of sittings in his studio in Redfern. Bill is the cartoonist for *The Australian* and a very talented artist. His best known works include the two magnificent portraits of Sir Donald Bradman; one is in the National Portrait Gallery and the other is in the Bradman Museum.

The presentation to the Bar Association on 29 October 1999 was attended by the Chief Justice, his family (including a very young, contented grandchild), Bill Leak and his partner, members of the Bar Council and the Silks of 1997 and their partners. Russell McIlwaine S.C. presented the gift to the Association and the (then) Senior Vice-President, Ruth McColl S.C., as acting President, unveiled the portrait and invited the Chief Justice to comment.

The Chief Justice spoke warmly of his experience sitting for the portrait and apologised for wearing the particular tie depicted. He did suggest that Bill had made one obvious mistake in the portrait - the reflection of light off his hair in the studio had been misinterpreted by Bill in the painting as a hint of greyness. It must be said that this submission was not regarded by those present as being persuasive, at all.

Bill provided some entertaining stories about the experience of painting His Honour and his attempt to capture that wry smile which is so well known to the Chief Justice's friends and colleagues at the NSW Bar.

This convivial occasion was enhanced considerably by the presence of family and friends. The Common Room was filled with a spirit of friendliness, familiarity and camaraderie. That spirit is an enduring and special feature of life at the Bar which requires more opportunities for expression.

The 1997 Silks, in alphabetical order, are: Virginia Bell S.C. (now Bell J), David Buchanan S.C., Mike Cashion S.C., Richard Cogswell S.C., Des Fagan S.C., Steven Finch S.C., John Graves S.C., Phil Greenwood S.C., Phil Hallen S.C., Peter Johnson S.C., Anna Katzmann S.C., Peter McEwen S.C., Russell McIlwaine S.C., Grahame Richardson S.C., Bob Toner S.C., Stephen Walmsley S.C., David Yates S.C.

Greenwood S.C.

Eleventh Floor Wentworth Chambers

Oxford Companion to the High Court of Australia

Work has commenced on a new publication about the High Court. The editors, Professor Tony Blackshield, Professor Michael Coper and Mr George Williams, are seeking assistance with three specific entries in the *Companion*: 'Poems', 'Songs' and 'Humour.'

Readers of *Stop Press* who may know of any ballads, songs, poems or examples of judicial humour relating to the nation's highest court are encouraged to submit them to the editors of the *Companion*.

Contributions may be sent to the editors via email: highcourtproject.law@anu.edu.au, phone: (02) 6249 0092 or fax: (02) 6249 0097. If you want to find out more about *the Oxford Companion to the High Court of Australia*, you can visit their web site at http://lawanu.edu.au/HighCourt_Project/HCP.html

Byrne S.C. launches the Criminal Defence Lawyers Association

On 24 November a number of solicitors and barristers gathered in the Piazza Coffee Shop in the Downing Centre to launch the Criminal Defence Lawyers Association. Paul Byrne S.C. and Phillip Boulten, both of Forbes Chambers, welcomed members and outlined their vision for the new organisation.

The aim is to 'ensure justice and procedural fairness to people accused of a crime or subjected to arrest or detention.' The Association will provide a forum for criminal defence practitioners to exchange information relating to all aspects of criminal law. Boulten told the gathering that it was planned to establish an Internet site

by the middle of 2000, complete with a *Brief Bank* containing useful examples of briefs and submissions. This would be modelled on the US National Association of Criminal Defense Lawyers, and it is hoped that there will be other close links between the two organisations.

You can visit the American web site on <http://www.criminaljustice.org/>

Membership of the organisation now stands at around 165, of whom, roughly 60 percent are barristers.

If you would like to join, or wish to obtain more information about the Association, contact John Levy on ph: 9390 7777.

Court Hours – Can they be modified or made more flexible?

The NSW Courts' Gender Initiatives Review

The problem

Women in the law who are parents have options. They may take time out and accept any accompanying compromise to their careers; work for employers who have family-friendly practices (avoiding areas such as litigation which require pre-trial conferences and all-day court attendances); or make the heart-rending sacrifice of not seeing their children, paying others to raise them.

Currently much is spoken about the under-representation of women at partner level, at the Bar, at Silk level, and in the judiciary. The tiny numbers of practising women at the NSW Bar (244 in contrast to the 1581 men) is one statistic which speaks for itself, as do the figures for the judiciary included in the NSW Courts' *Gender Initiatives Review*. These figures obtain despite a generation of equal graduation percentages of men and women from law schools.

Until there is flexibility introduced into the rigidity of the Court institution, so-called 'glass ceilings' will remain firmly intact. The options for women who wish to succeed at parenting, as well as professionally, will operate to keep them under-represented at advanced levels in the law.

One solution

Currently, with some exceptions, most courtrooms are used for business between the hours of 10 am and 4 pm. They are closed between 1 and 2 pm. This is a usage rate of 5 hours per day, or 25 hours per week. Over the average court year of some 46 weeks, this is a total of 1150 hours.

I propose consideration of a plan whereby some courtrooms are used for 6 hours per day, or 30 hours per week, which is 1380 hours over 46 weeks.

The difference is 230 court hours, or a gain of 46 current court hearing days.

The relevance of the plan to the courts' 'gender awareness' concept is as follows. It seems that the current court hours, when combined with before and after conferences, do not allow for active and quality parenting. Parents who wish to collect their children from school or

spend some time with them doing homework, or have some quality time before dark and fatigue descend, are unable to if involved in everyday litigation. If it is acknowledged that spending quality time is a significant and desirable parental responsibility, the onus falls upon those who have influence to look at options which, whilst challenging the established regimen, may offer flexibility and more choices for parents, whether the latter be judges, practitioners, or court staff.

My own suggestion, which is at very much the brainstorming stage, is as follows:

One court or more at each tier from District to Supreme and in each division of the latter could be designated the Twin Session Court. Sessions in that court could be split into two shifts: 10 am – 1 pm ('the morning shift') and 1 pm – 4 pm ('the afternoon shift').

Judges would be assigned half-day matters which would allow for research, the writing of judgments or the undertaking of parental duties themselves.

At call-over, the Twin Session court would have to be requested, in the same manner that dates, interpreters, real-time transcripts and other matters appropriate to a case are presently sought. A matter requiring 15 hours of court-time, or three current court days, would be set down for five half-days, morning or afternoon session.

Advantages

The advantages are self-evident and include:

- i. The court facilities would not lie idle for an hour at lunchtime.
- ii. Clients would benefit, for example where previously liable for one full day of fees when a matter settles, to only a half-day or a reduced day rate at least.
- iii. The longest witnesses would be required to wait around outside a court-room would be half a day.
- iv. Judges, practitioners and court staff could enjoy being involved in active, quality parenting.

v. Judges would have time to write judgments.

vi. Cases could start at the half-day point instead of parties, practitioners and witnesses being inconvenienced, told at 3 pm that their case was 'not reached', and the parties then being liable for a full day's fees.

vii. Fluidity of options for practitioners – varying practice loads according to changing family needs.

Issues

Issues for consideration are many and no doubt as seemingly insurmountable now as maternity leave, part-time employment and job-sharing once seemed.

Conceivably, the introduction of such a novel system would no doubt have an impact upon the numbers of judicial appointments as well as the salaries and condition packages which are negotiated. Similarly, it would have an effect upon the fees charged by practitioners.

Feedback

The Twin Session Court idea is embryonic and requires informed and objective input. All suggestions are welcome. No ideas are bad ones. If the idea is not supported, all that is asked is that the basic structure of the idea not be dismantled without being fully and expansively examined for effectiveness, with a lateral and open-minded approach which offers constructive alternatives.

As George Bernard Shaw once said, 'Progress is impossible without change; and those who cannot change their minds cannot change anything.'

Sophie York

*Sir James Martin Chambers
Research Convenor for 1999, Women
Lawyers Association*

Note: Although the article was originally written for an audience of women lawyers, the author wishes to acknowledge its applicability to all parents who would wish to achieve a successful balance between professional and family life.

1999 Bar Council Election Results

Declaration of 2000 Ballot pursuant to Articles 46 and 57 of the Articles of Association of the New South Wales Bar Association

On 23 November 1999 the Executive Director, as Returning Officer, declared the following to be elected to Bar Council:

Bret Walker S.C.
 Ian Harrison S.C.
 Ruth McColl S.C.
 Anna Katzmann S.C.
 Brian Donovan QC
 Philip Greenwood S.C.
 Michael Slattery QC
 Dennis Wheelahan QC
 Donald Grieve QC
 Peter Maiden
 Jeremy Gormly
 John Fernon
 Kate Traill
 Stephen Odgers
 Chrissa Loukas
 Jane Needham
 Justin Gleeson
 Jacqueline Gleeson
 Andrew Bell
 Lloyd Babb
 James Renwick



The Bar Council

Front row: Slattery QC (Secretary), Walker S.C. (Senior Vice-President), McColl S.C. (President), Harrison S.C. (Junior Vice-President), Katzmann S.C. (Treasurer), Philip Selth (Executive Director).

Middle row: Grieve QC, Andrew Bell, Jacqueline Gleeson,

Chrissa Loukas, John Fernon, Jeremy Gormly, Kate Traill, Donovan QC, Wheelahan QC.

Back row: Peter Maiden, Greenwood S.C., James Renwick, Lloyd Babb, Justin Gleeson, Jane Needham, Stephen Odgers.

Votes Cast for Candidates

Walker B.W., S.C. 635
 Harrison I.G., S.C. 555
 McColl R.S., S.C. 547
 Katzmann A.J., S.C. 541
 Donovan B.H.K., QC 529
 Gormly J.P. 445
 Greenwood P.H., S.C. 413
 Slattery M.J., QC 400
 Wheelahan D.A., QC 397
 Grieve D.E., QC 355
 Maiden P.G. 339
 Needham J.A. 335
 Odgers S.J. 312
 Traill K. 310
 Gleeson Ms J.S. 272
 Loukas C.T. 269
 Rares S.D., S.C. 267
 Letherbarrow R.V., S.C. 245
 Gleeson Mr. J.T. 229
 Williams M.L., S.C. 223
 Fernon J.J.E. 204
 McEwen P.J., S.C. 201
 Deakin P.J., QC. 200
 Marshall H.J. 200
 Torrington S.E. 199
 Holmes M.F., QC 192
 McSpedden L.M. 182
 Babb L.A. 182

Elkaim M.A. 180
 Bennett J.L.A. 174
 Graves J.J., S.C. 172
 Robson J.E. 161
 Bell, Mr A.S. 160
 Cusack G.J.T., QC 155
 Rewell K.P. 154
 Quickenden R.E. 152
 Davenport C.A. 150
 Alexis T.A. 149
 Hodgekiss C.C. 144
 Ronzani D.L. 144
 Seery P.M. 139
 Poole G.S. 132
 Winch P.M. 131
 Leggat C.J. 130
 Gullotta S.P. 128
 Feller D.D. 125
 Underwood G.E. 121
 Young J.H. 113
 Campbell S.G. 102
 Kintominas P. 102
 Renwick J.G. 99
 McGrath G.W. 97
 Sharpe J.L. 94
 Bell, Mr R.S. 93
 Kennedy G.J. 88

Gerber P.C. 88
 Dick R.A. 86
 Reoch A.R. 85
 Dalton D.G. 85
 Pike I.R. 85
 Hartstein V.A. 83
 Harper R.R.I. 79
 Leotta K.E. 77
 Hogan-Doran D. 77
 Rasmussen R.K.M. 73
 Linegar P.R. 70
 Taylor I. 70
 Odgers K.G. 66
 Kaur-Bains S. 62
 Jordan D.K. 56
 Bell, Mrs R.T. 55
 Thode S. 52
 Pinkerton C.T. 50
 Hogg A.C. 31

The 1999 Bar Council elections were the last to be declared pursuant to Articles 46 and 57 of the Articles of Association. Subsequent elections will be governed by the provisions of the new Bar Association constitution, which comes into

effect on 1 January 2000. These new provisions were drafted in such a way as to avoid confusion from different interpretations that can be placed on the way in which the Articles require votes to be counted and candidates elected.

Office Bearers

Bar Council met on 25 November 1999 and elected the following members of the Executive:

President

Ruth McColl S.C.

Senior Vice President

Bret Walker S.C.

Junior Vice President

Ian Harrison S.C.

Secretary

Michael Slattery QC

Treasurer

Anna Katzmann S.C.

Becoming Part Heard and Returning a Brief

The circumstances in which briefs may be returned are the subject of Rules 93 to 102 of the *NSW Barristers' Rules*.

Rule 95 provides as follows:

'A barrister must not return a brief to appear in order to accept another brief to appear unless the instructing solicitor or the client, as the case may be, in the first brief has permitted the barrister to do so beforehand, after the barrister has clearly informed the instructing solicitor or the client, as the case may be, of the circumstances in which the barrister wishes to return the brief and of the terms of this Rule and Rule 97.'

Rule 97 provides as follows:

'A barrister who wishes to return a brief which the barrister is permitted to return must do so in enough time to give another legal practitioner a proper opportunity to take over the case.'

The question arises; what to do if a case continues beyond the time allocated for it and the barrister realises that the part-heard case will continue into a day in respect of which another brief is held?

The obvious and most urgent step to take is to inform the solicitors in both matters of the difficulty. This must be done as soon as the risk of being jammed becomes apparent. It may be that one of the solicitors will be able to release the barrister from the obligation to appear.

If the barrister is not released then the solution of the problem is not an easy one and no rule of general application can be laid down. However, as a general principle, the barrister should remain in the part-heard case regardless of the difficulty and inconvenience that that will cause for those in the other case.

The reason for the general principle is obvious. A barrister in a part-heard case cannot adequately transfer that case to another barrister because the incoming barrister cannot be fully aware of what has gone before.

No matter how late the transfer of a case which has yet to begin, the incoming barrister will have at least between 4pm on the day before and 10am on the day of the hearing to become aware of the nature and content of the material relating to that latter case.

A barrister of appropriate seniority and skill should be able to absorb and master the material sufficiently to properly conduct the case.

If that cannot be done then an adjournment of that case, no matter what the consequences, might be the only way out.

Wheelahan QC
Jack Shand Chambers
10 November 1999

Bar Briefs

Stephen Odgers will be the Bar Association representative on the NSW Attorney General's Department working party on a review of the *Drug Misuse and Trafficking Act 1985* and the *Poisons and Therapeutic Goods Act 1966*.

At the Lectern

In November, two evening sessions were held that addressed the standard of advocacy in the Family Court of Australia. The Hon Justice Rose addressed the members on the common pitfalls of advocates at trial, and The Hon Justice Ellis discussed the conduct of appeals in the Family Court or Australia. Topics examined included pre-trial preparation and aspects of advocacy, along with the principles of discretionary judgments, summary of written argument, and preparation of notices of appeal.

The final CLE of the year, held on 1 December, involved a topic of general interest, rather than a specific area of practice. The republic referendum is still a live issue, it would seem, with some heated debate being generated by the speakers. Kerry Jones of the No Republic campaign, Andrew Robb of Conservatives for an Australian Head of State, The Hon Justice Handley, and David Jackson QC all gave their views of the future of the Australian political system and the republican issue in particular.

Most CLE seminars are now recorded on video, and some are transcribed. Regional members in particular should note that videotapes of recorded CLE seminars will be kept in the Bar Library, and may be borrowed by members. Transcripts, when available, may be purchased at cost price. The Goods and Services Tax seminar transcript is now available for purchase. Please contact Stacey Hatch, Assistant Education Manager on ph: (02) 9229 1712 fax: (02) 9221 1149 or email shatch@nswbar.asn.au to obtain further details.

The following videos are now available in the Bar Library:

The Goods and Services Tax

Breakfast with Dr Bhadra Ranchod: The report of the Truth and Reconciliation Commission

The republic referendum: Where to now?

Walkabout

The following is a selection of meetings and events attended by the President on behalf of the Bar Association during July.

- 5 November** The Acting President, McColl S.C., attended the Senior Counsel ceremony in the Common Room of the NSW Bar Association.
- 12 November** The Acting President, McColl S.C., attended a function at the Bar Association held for judges of the Local Court, Dust Diseases Tribunal and for Magistrates.
- 17 November** The Acting President, McColl S.C., attended a function held by Judges of the Compensation Court of NSW.
- 18 November** The President, Barker QC, and the Executive Director met with the NSW Attorney General to discuss a range of matters.
- 18 November** The President attended his final Bar Council.
- 19 November** The President attended the Bar Association's AGM, at which the new constitution was approved.
- 24 November** The President hosted a function to thank the staff of the Bar Association for all their assistance during his term of office.

GST Alert

Those members of the Bar who have already received from the Australian Tax Office a kit for registration of an Australian Business Number or ABN will have seen the grey form headed 'Stop Press'. It contains an election to claim input tax credits on insurance premiums. The effect of such an election was to be that GST was payable on any settlement made under the insurance policy.

That election appears now to have been superseded. On 24 November 1999 the Government introduced significant number of amendments to *A New Tax System (Indirect Tax and Consequential Amendments) Bill No 2 1999*. One series of amendments introduces a new system with respect to insurance called Decreasing Adjustment Mechanism or DAM. Under the proposals an insured will be entitled to claim an input tax credit on an insurance premium under ordinary principles and will have no GST liability on settlement of claims. In effect the amendments propose to shift the GST liability from the insured to the insurer.

There is no longer a requirement to elect to obtain an input tax credit on insurance premiums.

Instead, in relation to policies straddling 1 July 2000, every insured must notify his or her insurer by 30 June 2000 of his or her ability to claim an input tax credit and the percentage of that input tax credit. If an insured does not notify the insurer, or

understates the input tax credit entitlement, the insured will be liable to GST on any claims paid by the insurer to the extent that it was entitled to an input tax credit or to the extent that that entitlement was understated.

In other words, failure to notify one's insurer by 30 June 2000 will result in a person not being fully insured for any loss.

The Bill makes some 119 amendments to the GST Acts. Another key amendment will require additional record keeping by taxpayers. It is now proposed that amounts equal to GST payable on taxable supplies will be excluded from assessable income and amounts equal to input tax credits on creditable acquisitions will be excluded from allowable deductions.

For income tax purposes, therefore, we will all need to exclude the GST elements in our fees and our business expenses.

These adjustments will have to be made in the 1999-2000 income tax year with respect to supplies which straddle 1 July 2000.

The simplification process is out of control.

Gzell QC
Chairman
GST Committee
2 December 1999

Speeches

Matters of Principle – A Reflection on the Judicial Conscience: The Hon. Justice James Wood delivered a speech at Ashfield Uniting Church on Sunday, 14 November 1999. It was widely reported and became the subject of editorials in the major metropolitan newspapers. A copy of the speech may be obtained from the Bar Library or from the Supreme Court's Internet site at www.lawlink.nsw.gov.au/sc

Women on Statutory Boards: The Hon. Justice P.A. Bergin delivered this speech at the Seminar *Smashing Glass Ceilings: How do you Plead?* on 29 October 1999. A copy may be obtained from the Supreme Court's web site at www.lawlink.nsw.gov.au or from the Bar Library.

Media Briefing

Press Releases from the Law Council of Australia

Extra \$17 million per annum Commonwealth legal aid funding required for family law, 24 November

At Least Extra \$126 million over three years required for Commonwealth legal aid funding, 23 November 1999.

Three-Year Temporary Refugee Visas Should be Opposed by Labor: Law Council, 22 November 1999.

Law Council 'Gravely Concerned' with Legal Aid Funding Cut Report, 18 November 1999.

Law Council 'Warmly Welcomes' Appointment of Family Law Section Chair as Judge, 10 November 1999.

Visit the Law Council of Australia's web site at www.lawcouncil.asn.au for a full list of its submissions and press releases.



THE CHARTERED INSTITUTE OF ARBITRATORS AUSTRALIAN BRANCH ENTRY COURSE

The Branch will conduct an Entry Course leading to Associate membership of the Institute at the Victorian Bar Readers Centre, Melbourne on 26 and 27 February 2000. The Course will involve lectures, tutorials and conclude with a 2 hour written examination. The cost is \$750 and request for a registration form should be sent to the Honorary Secretary, GPO Box 5204, Sydney, 1044.

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Letters

A letter to the Legal Assistance Manager;

Re: [Party names withheld]

Today I have been able to almost wrap up six months of work directed at helping this elderly couple. Knowing them, it may well be that you will receive a letter from them, but in the meantime, I should say how grateful I am that the NSW Bar Association is around.

Would you please let Mr Pickles [6/ Windeyer Chambers] know that he has done the Association proud? I am writing to him separately, but would still appreciate Mr Pickles receiving a 'Mentioned in Despatches' award. Good soldiers go on forever when recognised for their valour and Mr Pickles should have his recognised, too.

Nicoll Mason-Jones

Solicitor

30 November 1999

A letter to the Public Affairs Officer;

Re: Donation of Robes and Wig

Please accept our sincerest thanks for the donations. They have already been used in court.

Please pass on our thanks to each of the donors. Their generosity is appreciated.

Thank you for your kind assistance.

Aruna Prasad

Director Legal Aid

Legal Aid Commission

Suva, Fiji

4 November 1999

Every dog has his day in court

The editors of *Stop Press* searched the *District Court Rules* but could find no guidance on a situation described by Judge P.A. Twigg QC of the NSW District Court. At a recent hearing in Gosford Court, His Honour was listening to the plaintiff in the witness box. It was then that a dog, we now know to be called Rudy, whose master was hearing a matter in an adjacent court, wandered in through the judge's entrance. Rudy approached the bench and, following a few quick sniffs, proceeded to cross-examine the witness with his paws. Apparently satisfied with the result, the dog returned to the Judge's room.

Coming up

ABA Dinner

On 31 January 2000 at 7:00 pm, there will be a dinner in the Great Hall of the High Court. Organised by the Australian Bar Association, it will mark the occasion when the new Silks take their bows in the High Court. Those who wish to attend may obtain an invitation form from Reception and forward it, together with the appropriate cheque, by Monday 10 January 2000. For further information contact Dan O'Connor on ph: (07) 3236 2477; fax (07) 3236 1180 or email doconnor@qldbar.asn.au

Opening of the Law Year, Monday

31 January 2000: A Catholic service to mark the opening of the Law Year will be held at 9am at St Mary's Cathedral. The Anglican service will be held at St James Church, King Street at 10.30am.

Law Sabbath, Saturday 12

February 2000: A service will be held at 8:45 am, 12 February 2000 at the Great Synagogue.

2000 Commonwealth

Understanding Fellowship Scheme.

Each year the Commonwealth Lawyers Association is entitled to nominate three suitable candidates for the Scheme. Each Fellowship is valued at £8000 per person and involves three weeks of learning activities in London and one other Commonwealth country. It is designed to enable Fellows to conduct a research project and to promote the Commonwealth upon their return from London.

Nominations must be received by the Commonwealth Lawyers Association no later than 15 January 2000. For more information about supporting documents and the nominating procedure, contact Reception or email Helen Potts at helen.potts@lawsociety.org.uk

Managing Justice: real reform for the civil system, 19-20 May 2000,

Regent Hotel Sydney: The Australian Law Reform Commission will coordinate a conference of leading international and Australian researchers to build upon the findings of ALRC *Discussion Paper 62, Review of the federal civil justice system*. Information may be obtained from Reception or through the ALRC Internet site at www.alrc.gov.au

Vale

Reginald Joseph Marr DFC QC

The NSW Bar Association notes with sadness the passing of Reginald Joseph Marr DFC QC on Tuesday, 16 November 1999, aged 82.

Marr was educated at Christian Brothers College, Waverley and served from 1940 to 1945 in RAAF squadrons 11, 20 and 43. It was during his service as Captain of a Catalina flying boat that he won the Distinguished Flying Cross for courageous action whilst rescuing the downed crew of an Australian Beaufighter in the Timor Sea.

Marr was called to the Bar soon after the Second World War, specialising in criminal law. In 1967 he was appointed a Crown Prosecutor and took silk in 1972. In March 1973 he became the Deputy Senior Crown Prosecutor (Appeals). In July 1974 Marr QC was appointed Solicitor-General of NSW, a position that he held until March 1978. Following his retirement from that office, he continued to practice criminal law and conducted a number of prosecutions for the Commonwealth.

A funeral service took place on Monday, 22 November 1999 at 10:00am, Waverley College Chapel, Birrell Street, Waverley.

Corrections

The November edition of *Stop Press* included a tribute to Ron Castan AM QC. The article is attributed Ron Basten QC. This is incorrect. The author was John Basten QC of Frederick Jordan Chambers. The Editors of *Stop Press* apologise for the error and any confusion it may have caused.

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Papers to Note

Legal expense insurance: An experiment in access to justice: The Law Foundation of New South Wales commissioned the Public Interest Advocacy Centre to write this report. It examined the overseas experience with legal expense insurance, options in policy design and the role of government. Its key findings and recommendations include: making LEI tax deductible or exempting it from fringe benefits tax stamp duties. A copy is available from the Bar Library.

Legal Aid Commission of NSW 1999 Annual Report: In 1998-99 the Legal Aid Commission approved grants of legal aid in 117,357 matters. 34.5 per cent of the Commission's clients are from rural and regional NSW. These statistics and more may be found in the *1999 Annual Report*. A copy may be obtained from the Bar Library, or from the Commission's website at www.legalaid.nsw.gov.au

NSW Court Services – Olympics Operational Plan: On 10 November 1999 the NSW Attorney-General announced arrangements for the state's court system during the 2000 Olympic Games. This document contains information about listing policies, the number of judges available for cases in the various jurisdictions and how many registries will remain open. A copy may be obtained from Reception or by visiting the Attorney-General's Department Internet site at www.lawlink.nsw.gov.au and looking under *What's New*.

Submission to the ALRC on Discussion Paper 62: Review of the Federal Civil Justice System: On 3 November the Law Council of Australia released its response to DP62. A copy of the submission may be obtained from the Bar Library or by downloading it from the Law Council's Internet site at www.lawcouncil.asn.au

Compensation Court of New South Wales: 2000 Court Calendar – Appointment of Sittings. Copy available from the Bar Library.

Law Foundation of NSW Annual Report 1999: Information on the Law

Foundation grants program, the Legal Information Access Centre (LIAC), Online Legal Access Project and the Justice Research Centre may be obtained from the Law Foundation's *Annual Report* for 1998-99. A copy may be obtained from the Bar Library.

Vision for a Just Society, by the Law Foundation of NSW. This publication outlines the Law Foundation's strategies for realising its 'vision of a just society, in which the justice system is fair, accessible, efficient, and universally understood.' A copy may be obtained from the Bar Library.

Review of the Franchising Code of Conduct: Discussion paper: Between 1 December 1999 and 31 May 2000, the Franchising Policy Council will review the Franchising Code of Conduct. A copy of the discussion paper is available from the Bar Library.

Federal Court Amendment Rules 1999 (No.6), Federal Court Amendment Rules 1999 (No.7), Practice Note No.14: Copies are available from the Bar Library

National Competition Policy Review - Legal Practitioners Act 1970: Options Paper: The ACT Department of Justice and Community Safety is undertaking a review of the *Legal Practitioners Act 1970*, as required by the Competition Principles Agreement between the Commonwealth, States and Territories. The review will be conducted in stages, with this paper focusing on licensing and disciplinary issues. A copy may be obtained from the Bar Library, or by downloading it from the ACT Government's web site at www.dpa.act.gov.au/ag/AGT1.html

Legal Profession Disciplinary Reports: The 'blue books', published by the Law Society of NSW, have been discontinued. The final issue was No.1 of 1999. The determinations of the Legal Services Division of the Administrative Decisions Tribunal may now be obtained only through the Internet at www.lawlink.nsw.gov.au/adt/nsf/pages/index

CCA views on direct access

Regina v William Vincenzo Favero [1999] NSWCCA 320 revised - 19/10/99

Catchwords: Criminal Law - application to withdraw pleas of guilty - ground of application, failure of legal representatives to advise of available defences - principles applicable; Legal Profession - direct access of client to barrister - observations as to undesirability of this practice

Held: that many of the problems in this case arose because the barrister appearing for Favero in the District Court accepted instructions directly from his client. Sully J said:

'[13] There was a time when best professional practice would have been understood instinctively by those engaged in the profession of the law to proscribe the kind of direct dealing between the barrister and his client which is so significant a feature by the relevant course of events in the present case.

[14] The changes that have been made to that long-standing, well-tried, and tested, definition of professional practice cannot of course be ignored. They have professional, and to some extent legislative, sanction. I think the Court would be lacking in the proper performance of its own duty if it did not say, and say plainly, that those departures from prior practice a sorry interference with proper standards of professional practice, and ought to receive absolutely no encouragement from any Court.'

Christmas Concert

The annual Christmas Concert was held on 9 December in the Bar Association Common Room. Justice Hidden and the choir entertained members and staff of the Association with a selection of carols. They ranged from Silent Night and Away in a Manger, through to the 15th century Coventry Carol, about the slaughter of the innocents. The Christmas tree was surrounded by presents for the Salvation Army Gift Appeal and \$166.50 in donations was collected from those attending the concert.

Appointments

District Court Judge

Richard Rolfe has been appointed District Court Judge, effective 1 February 2000.

Deputy Director of Public Prosecutions

Roy Ellis has been appointed Deputy Director of Public Prosecutions, effective 18 November 1999.

Deputy Senior Crown Prosecutors

Paul Conlon and James Bennett have been appointed Deputy Senior Crown Prosecutors, effective 30 November 1999.

Crown Prosecutors

Luigi Lungo has been appointed Crown Prosecutor, effective 2 December 1999.

Elizabeth Wilkins has been appointed Crown Prosecutor, effective 24 January 1999.

Acting Crown Prosecutors

Edwin Moberley has been appointed Acting Crown Prosecutor effective 2 December 1999 to 1 December 2000.

Virginia Lydiard has been appointed Acting Crown Prosecutor effective 24 January 2000 to 23 January 2001.

Acting Judge of the NSW District Court

Peter Grogan has been appointed as Acting Judge of the NSW District Court, effective 18 November 1999 to 30 June 2000.

Deputy President of the Administrative Decisions Tribunal

Caroline Needham S.C. has been reappointed part-time Deputy President of the NSW Administrative Decisions

Tribunal and Divisional Head of the Legal Services Division of the Tribunal effective 25 November 1999 to 24 November 2002.

Acting Magistrate

Derrick Hand has been appointed Acting Magistrate and Mining Warden, effective 29 January 2000 to 28 July 2000, following his retirement as State Coroner on 28 January 2000.

Administrative Decisions Tribunal

Pursuant to s13(2) of the *Administrative Decisions Tribunal Act 1997*, the NSW Attorney-General has reappointed the following persons as part-time non-presidential judicial members of the Administrative Decisions Tribunal of NSW commencing 29 November 1999 and expiring on 24 November 2002:

Dr A.C. Bennett S.C
J.S. Coombs QC
J.A. McCarthy QC
L.M. Morris QC
W.H. Nicholas QC
S. Norton
D.P.F. Officer
B.C. Oslington QC
L.P. Robberds QC
W.L. Robinson QC
B.M.J. Toomey QC
J.N. West QC
J.W.F. Brennan
J.J. Catanzariti
R.J. Slisdell
R. Cox
J.S. Currie
A. Durbach
G.F. Foster
R.J. Fox
C.A. Gailey
J.L. Greenwood
S.N. Hale
A.T. Martin
J.M. Mattila

G.B. Molloy
C.G. Staff
C.B. Vass

In addition, pursuant to section 13(2) of the Act, the NSW Attorney-General has appointed the following as part-time non-judicial members of the Tribunal for the same period.

A.F. O'Neill
D.C. Brehe
Dr M.E. Costigan
Dr B.D. Dyster
K. Elliott
J.A. Geddes
D. Hoareau
A. Kennedy
D. Mahon
A.M. Mara

Pursuant to Part 3 of Schedule 2 to the Act, the above persons have been assigned to the Legal Services Division of the Tribunal.

Legal Profession Advisory Council

The NSW Attorney-General has appointed the following persons members of the Legal Profession Advisory Council for a period of seven years commencing 7 December 1999, pursuant to the *Legal Profession Act 1987*:

s58(3)(a) of the Act: Vernon Winley (Chairperson)
s58(3)(b) of the Act: Peteris Ginters (barrister member)
s58(3)(d) of the Act: Judith Carpenter, Rodney Huey and Mike Nasir (community members)

The following members were reappointed to the Council:

Normal Lyall
Margaret Shaw
Philip Greenwood S.C

Bar Association New Members

Paul Hogan
Alexander Ladopoulos
David Price
Dominic Toomey

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Short Takes

Bar Association Annual General Meeting

The Bar Association's Annual General Meeting was held at 1.30 pm on Friday, 19 November 1999 in the Common Room. The major item of business was the new constitution, which was approved by members, and will enter into force on 1 January 2000.

Liquor Bar Credit

The Bar Association would like to remind members that credit will not be extended to members who have debts outstanding for more than 30 days. The Bar Council has directed that 'where a debt in excess of \$100 remained unpaid after four months of it being incurred, and satisfactory repayment arrangements had not been agreed, legal process be instituted to recover the debt.'

Stirling Milburn Hamman: On 29 October 1999 the NSW Court of Appeal, in *New South Wales Bar Association v Hamman* [1999] NSWCA 404, ordered the name Stirling Milburn Hamman, barrister, be removed from the roll of

legal practitioners. The application was initiated by the Bar Council.

Membership statistics and chambers: In the Association's *1999 Annual Report* the membership note listed the number of holders of practising certificates by chambers.

For a couple of reasons not all chambers were listed.

Barristers' Chambers on Floors 9 and 12 of 233 Macquarie Street, Sydney was one of the chambers not specifically listed.

Not all members occupy a 'traditional' chambers with a Head and Clerk. Accordingly, Barker QC, when President, asked the Executive Director to consider showing the membership statistics in the Annual Report and elsewhere in some way other than by chambers - perhaps by geographical areas.

NSW Bill of Rights Inquiry

The Legislative Council Standing Committee on Law and Justice is calling for submissions to an inquiry to report on whether it is appropriate or in the public interest to enact a statutory NSW Bill of Rights and/or whether amendments should be made to the Interpretation Act 1987. The Bar Association issued a media release supporting the Parliamentary inquiry [a copy may be obtained from the Internet site at www.nswbar.asn.au]

The Convenor of the Bar's Human Rights Committee, Cowdery QC, has asked barristers to assist in preparing a submission to the inquiry. Members wishing to make a contribution may do so by contacting him at DX 11525, Sydney Downtown or ncowdery@odpp.nsw.gov.au

Jack Shand Chambers makes generous donation to Bar charity

The President, McColl S.C., recently received a letter from H.P. Singh, Chief Executive Officer of the Motor Neurone Disease Association of NSW Inc., regarding a donation of \$2,990 from Jack Shand Chambers. The following is an extract from Mr Singh's correspondence:

'This donation will be used to purchase an electric lifting hoist, which costs about \$2,600. This particular equipment is very useful for a person with MND who has no ability to support his/her own weight. It is an essential aid for carers.

People living with MND require special equipment to live at home. Progression of the disease means escalating dependency on devices to support daily activities.

The current policy of MNDA NSW is to lend all equipment free of charge to members with motor neurone disease and we have been able to provide good quality service through the generosity of people like yourself, your colleagues and Jack Shand Chambers.

You are making a real difference in the lives of people with MND.'

H.P. Singh

Chief Executive Officer
Motor Neurone Disease Association of
New South Wales Inc.

Staff Appointments

The Bar Association has appointed Patrina Malouf as Administrative Officer to run Reception. Patrina is doing Business Studies and has worked in administration at Century 21 Real Estate and Marc Anthony Lawyers.

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